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EXAMINER

KARMIS, STEFANOS

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/531,102
Filing Date: March 17, 2000
Appellant(s): GIANNINI ET AL.

MAILED

MAR 08 2007

GROUP 3600

Mr. Robert J. Crawford
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 14 November 2006 appealing from the Office action
mailed 23 June 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,016,504	ARNOLD et al	1-2000
5,537,211	DIAL	7-1996
6,323,969	SHIMIZU	3-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The ground(s) of rejection on appeal is set forth in the Final Rejection mailed 23 June 2006. A copy of the rejection is attached to the end of this Examiner's Answer.

(10) Response to Argument

The Examiner summarizes the various points raised by the Appellant and addresses them individually.

A. Rejection of claims 17-31 under 35 U.S.C. § 103(a) over Arnold in view of Dial.

1. Regarding claim 17 Appellant asserts that there is no motivation to combine the teachings of Arnold with the teachings of Dial and that the references teach away from the combination since Arnold uses web-linking and Dial does not teach any networking when matching colors of clothing (see Appeal Brief, pages 4-6).

In Response: The Examiner respectfully disagrees that there is insufficient motivation to combine the teachings of Arnold with the teachings of Dial. Arnold teaches a method for tracking transactions from a virtual outlet Web site to a merchant Web site on the Internet (column 5, lines 23-26). Arnold teaches an on-line viewer site (column 5, lines 27-40) and a computer driven web-linking engine configured and arranged to display a first colored apparel article selected by an on-line viewer site for display with a second colored apparel article selected by an on-line viewer from the on-line viewer site (column 7, line 30 thru column 8, line 6 and Figure 1B, 1B20; Examiner notes that the product information for the articles of clothing

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contain a color description of each item). This information assists a purchaser in obtaining the necessary product information when determining whether to purchase the articles of clothing.

Arnold does provide some color matching in that the items listed (Figure 1B, 1B20) list the colors of each item. Therefore a user would be able to compare the black or white pants to the green shirt (Figure 1B). Claim 1 fails to elaborate on the "color matching criterion" and simply listing the color of each item would be sufficient to teach a "color matching criterion" when given its broadest reasonable interpretation. Nonetheless, the Examiner has also provided the teachings of Dial to show the teaching of matching articles of clothing based on a color criterion. Dial teaches a method and apparatus for selecting a wearable in which the wearables being matched can be two articles of clothing (column 6, lines 49-61). Dial teaches that the system is computer driven, the computer comprising inputs/outputs, hardware and software (column 5, lines 28-61). Dial teaches a color sensor apparatus connected to a computer (control logic) for reading the colors of the wearables in a store and determining if they are within a certain measurement of one another (column 6, lines 18-48). This allows the purchaser to obtain necessary color information and to determine whether to purchase the wearables.

There is sufficient motivation to combine the computer-driven web linking clothing search and display teachings of Arnold with the computer-driven color matching of wearables (clothing) as taught by Dial because it further assists the purchaser with the decision of whether or not to purchase products by supplying the purchaser with more complete product information. There combining of Arnold and Dial would not frustrate one another. Dial teaches an object of the invention is that it can be used at a point of sale device so that shoppers can make an educated decision on a potential purchase (column 3, lines 27-44). Simply because Dial does not

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utilize web linking does not mean that the combination of their teachings would be frustrated and neither the teachings of Arnold or Dial would be undermined. Both Arnold and Dial teach the use of computers in providing purchasers with product information before they make purchases and therefore there would be sufficient motivation to combine their teachings as discussed above.

For these reasons, there is sufficient motivations to combine the teachings of Arnold with the teachings of Dial and the combination would not frustrate the teachings of either. Their teachings provide for the matching of clothing items so that a potential purchaser obtains a level of product information capable of assisting the potential purchaser with the decision of whether or not to purchase the products.

B. Rejection of claims 25 and 26 under 35 U.S.C. § 112, second paragraph.

1. Regarding claims 25 and 26 Appellant asserts that the phrase “color compatible” does not render claims 25 and 26 indefinite under 35 U.S.C. § 112, second paragraph because Appellant’s specification teaches that “color compatible” is implemented using objective standards and thus has a meaning discernable to one of ordinary skill in the art (see Appeal Brief, pages 6-7).

In Response: The Examiner respectfully disagrees with the Appellant that one of ordinary skill in the art would be able to discern what is intended by the language of color compatible. The phrase “color compatible” could be both an objective test as set forth by the Appellant, but it could also be a subjective test, as set forth by the Examiner. The use of a subjective term renders a claim indefinite because it is not clear to one of ordinary skill in the art what the Appellant regards as the invention. See *In re Moore* 169 USPQ 236. Neither of the claims from which 25 and 26 depend (claims 17 and 23) clarify that “color compatible” would be an objective standard.

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On the contrary, it appears to be a subjective standard, which utilizes a color code that is provided for each article of clothing for use in the matching criterion (claim 23). This color code could be no more than the actual listing of the color and therefore it would be a subjective test to determine if the color code orange is considered "color compatible" with the color code green.

Therefore, given the broadest reasonable interpretation of the claims, it would not be obvious to one of ordinary skill in the art at the time of the Appellant's invention what is intended from the phrase "color compatible." For these reasons claims 25 and 26 are indefinite for failing to particularly point out what the Appellant regards as the invention.

C. Rejection of claims 23-29 under 35 U.S.C. 103(a) over Arnold in view of Dial in further view of Shimizu.

1. Regarding claims 23-29 Appellant asserts that there is no motivation to combine the teachings of Arnold in view of Dial with the teachings of Shimizu (see Appeal Brief, pages 7-8).

In Response: The Examiner respectfully disagrees that there is no motivation to combine the teachings of Arnold in view of Dial with the teachings of Shimizu. Appellant states that the Examiner failed to provide any evidence of motivation to combine the cited references.

However, in the final rejection, the Examiner articulated that the motivation to combine the references was to "provide an accurate and objective basis for matching of apparel color and prove esthetically pleasing." Therefore Appellant's argument is without merit. Nonetheless, in order to clarify the motivation to combine the teachings of Arnold and Dial with Shimizu the Examiner will further elaborate. Arnold teaches a computer driven web-linking site that displays two colored apparel items as discussed above. Dial teaches a computer driven process for

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measuring the color of two wearables to determine if they are within an acceptable color range of one another as discussed above. Shimizu further elaborates on making the color matching criteria by teaching an objective manner for representing colors accurately from input devices (column 5, lines 45-67). Shimizu teaches that there are multiple objective ways to measure and represent colors, all of which are old and well known in the art, including CMY signals, RGB signals and L*a*b signals (column 1, lines 31-59). These codes (CMY, RGB and L*a*b*) provide a code for comparing and converting colors as discussed in the claimed invention. There is sufficient motivation to combine the teachings of Arnold and Dial with the teachings of Shimizu because it provides for the accurate and objective basis for matching apparel based on color as mentioned above.

Appellant has not pointed out any specific claims from claims 23-29 or any specific claim language in alleging that Arnold in view of Dial in view of Shimizu fails to teach the claimed limitations. Therefore this argument is not persuasive. For these reasons, there is sufficient motivation to combine the teachings of Arnold in view of Dial in further view of Shimizu and thus claims 23-29 are rejected under 35 U.S.C. 103(a).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Stefanos Karmis
02 March 2007
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